



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Northern Virginia Regional Office
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Woodbridge, VA 22193-1453
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www.deq.state.va.us

Robert G. Burnley
Director

Jeffery A. Steers
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

BEAZER HOMES

FOR

COLES RUN MANOR

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15 (8a and 8d) and 10.1-1185, between the State Water Control Board and Beazer Homes regarding Coles Run Manor, for the purpose of resolving certain violations of the State Water Control Law and Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code § 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.

6. "Beazer" means Beazer Homes.
7. "Stanley Martin" means Stanley Martin Companies, Inc.
8. "NVRO" means the Northern Virginia Regional Office of the Department.

SECTION C: Findings of Facts and Conclusions of Law

1. Beazer is a nationwide homebuilder headquartered in Atlanta, Georgia. Beazer maintains a Virginia Division office in Chantilly, Virginia and owns a property known as Parkway West in Prince William County, Virginia.
2. On March 9, 2005, DEQ conducted a site inspection of the Coles Run Manor site, a property adjacent to Parkway West, that is owned by Stanley Martin. DEQ observed the unauthorized fill of palustrine forested ("PFO") wetlands and intermittent stream channel at the Coles Run Manor site.
3. DEQ had previously received a Joint Permit Application ("JPA") for the development of the Coles Run Manor property on January 13, 2004, but had suspended processing of the application on July 13, 2004, due to insufficient information.
4. On March 21, 2005, DEQ sent Notice of Violation ("NOV") No. 2005-03-NVRO-001 to Stanley Martin citing an alleged violation for the unauthorized fill of PFO wetlands and intermittent stream channel.
5. Beazer responded to the March 21 NOV in a letter dated April 7, 2005, which explained that Beazer had received approval from Prince William County for a Public Improvement Plan to serve Parkway West that includes land located on Stanley Martin's Coles Run Manor property. Beazer had received a VWP Permit and a U.S. Army Corps of Engineers permit for its Parkway West project, and incorrectly presumed that impacts associated with the Public Improvement Plan were included under the Parkway West permits. Beazer stated that its work began on the Stanley Martin site on January 25, 2005.
6. In a document faxed on April 25, 2005, Burgess & Niple, consultant to Stanley Martin, stated that 0.06 acres of PFO wetlands and 565.4 linear feet (0.1 acres) of intermittent stream channel were filled at the Coles Run Manor site, including 42.92 linear feet of intermittent stream channel that were not proposed for impact in the Coles Run Manor JPA. The other (previously proposed) wetlands and stream impacts totaled five separate impact areas.
7. A meeting on May 31, 2005 at DEQ with Stanley Martin and Burgess and Niple revealed that Stanley Martin had signed an easement in September 2004, allowing Beazer to access the Stanley Martin property because Prince William County required the signature prior to approving Beazer's project. At the time when the unauthorized

- impacts were taken, Stanley Martin had not assigned a land developer to the project, nor had the company received Prince William County approval of the site plan.
8. On June 1, 2005, Stanley Martin provided DEQ with the Development Agreement between Beazer and Stanley Martin for the Public Improvement Plan. The Development Agreement, dated September 8, 2004, explicitly states that "...any clearing, blasting, grading and the like by whichever party proceeds first will benefit the other party..."
 9. DEQ issued General Permit Authorization No. WP4-04-0109 to Stanley Martin for the Coles Run Manor project on June 3, 2005. In addition to the previously unauthorized impacts (excluding the 42.92 linear feet of intermittent stream not proposed in the JPA), the Permit Authorization was for impacts yet to be taken. The Permit Authorization required mitigation at normal ratios (i.e., 2:1 for PFO wetland impacts), with the intention that additional mitigation would be requested in Orders to Beazer and Stanley Martin.
 10. On July 11, 2005, DEQ sent NOV No. W2005-07-NVRO-001 to Beazer citing an alleged violation for the unauthorized fill of PFO wetlands and intermittent stream channel. In response to the July 11 NOV, Walsh, Colucci, Lubeley, Emrich, & Terpak, PC, a law firm representing Beazer, sent a letter to DEQ dated July 29, 2005. The letter stated that the essential facts of the NOV are true, that the taking of those impacts was unintentional, and it was the result of miscommunication between Beazer and Stanley Martin.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of its authority granted in Va. Code § 62.1-44.15 (8a) and (8d), orders Beazer, and Beazer voluntarily agrees that:

1. Beazer and Stanley Martin shall jointly perform the actions described in Appendix A to this Order to remedy the violations described above and achieve compliance with the State Water Control Law and Regulations; and
2. Beazer shall pay a civil charge of \$8,501 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, VA 23240

Either on a transmittal letter or as a notation on the check, Beazer shall indicate that this payment is submitted pursuant to this Order and shall include the Federal Identification Number for Beazer.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Beazer, for good cause shown by Beazer, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves those violations specifically identified herein, including the matter addressed in the NOV issued to Beazer by DEQ on July 11, 2005. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Beazer admits the jurisdictional allegations, factual findings, and conclusions of law contained herein; provided, however, that this Order shall not affect any claims between Stanley Martin and Beazer or the relative position of such parties with respect to responsibility for the matters referenced herein.
4. Beazer consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Beazer declares it has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Beazer to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

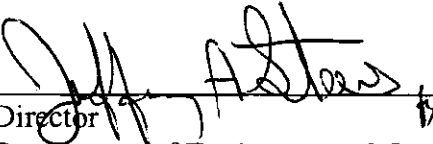
8. Beazer shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Beazer must show that such circumstances resulting in noncompliance were beyond their control and not due to a lack of good faith or diligence on their part. Beazer shall notify the NVRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition listed above, which Beazer intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. Any plans, reports, schedules, permits, letters, or specifications attached hereto or submitted by Beazer and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall become effective upon execution by both the Director or his designee and Beazer. Notwithstanding the foregoing, Beazer agrees to be bound by any compliance date that proceeds the effective date of this Order.
12. This Order shall continue in effect until the Director or the Board terminates this Order in his or its sole discretion upon 30 days' written notice to Beazer. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Beazer from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

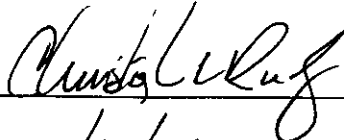
13. By its signature below, Beazer voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17th day of MARCH, 2006.



Director
Department of Environmental Quality

Beazer Homes voluntarily agrees to the issuance of this Order.

By: 

Date: 01/17/06

Commonwealth of Virginia
City/County of FAIRFAX

The foregoing document was signed and acknowledged before me this 17th day of
JANUARY, 2006, by CHRISTOPHER L. RUDY who is
(name)

DIVISION VP (VA DIVISION) of/for Beazer Homes.
(title)



Notary Public

My commission expires: JAN. 31, 2009

**APPENDIX A
SCHEDULE OF COMPLIANCE**

Beazer Homes and Stanley Martin Companies, Inc. shall jointly:

1. Perform supplemental mitigation consisting of the purchase of 0.12 wetland credits from an approved wetlands mitigation bank within the same or adjacent hydrologic unit code as the project. DEQ agrees to give credit for wetland credits already purchased as supplemental mitigation to meet the requirements of U.S. Army Corps of Engineers Permit No. 04-V0109, issued on June 17, 2005;
2. Perform supplemental mitigation to total 522.48 linear feet of additional stream mitigation consisting of the following: 1) Enhancement of 1,011 linear feet of riparian buffer adjacent to Foggy Bottom Wetland Mitigation Bank in Prince William County. Enhancement will include a 50-foot wide buffer along both sides of 836 linear feet of intermittent stream channel and a 50-foot wide buffer along one side of 175 linear feet of perennial stream channel. DEQ agrees to give credit for stream mitigation already purchased as supplemental mitigation to meet the requirements of U.S. Army Corps of Engineers Permit No. 04-V0109, issued on June 17, 2005; and, 2) A contribution of \$28,600 to the Prince William County Stream Protection Program to be used for a stream channel restoration project within the county. Payment to the county shall be made by check payable to "Director of Finance" and delivered to:

Prince William County Stream Protection Program
Attention: Wade Hugh
4379 Ridgewood Center Drive
Prince William, VA 22192

On the transmittal letter, indicate that this payment is to be used for a stream restoration project and is submitted pursuant to this Order.

3. Using natural channel design practices, restore the 42.92 linear feet of intermittent stream channel that was not proposed for impact in the original JPA. A stream restoration plan and schedule shall be submitted to DEQ by February 1, 2006, and upon its approval by DEQ, this plan and schedule shall become a part of and enforceable under the terms of this Order; and
4. The supplemental mitigation in Items 1, and 2 above shall be completed, and documentation of the transactions shall be submitted to DEQ within 60 days of the effective date of this Order.